

5.04.00.00 - PROTECTION

5.04.01.00 General

Protection is defined as an acquisition where substantial building activity or appreciation of vacant land value in excess of the STIP inflation rate for construction projects is both likely and imminent in the event early purchase is not undertaken. The STIP inflation rate can be obtained from the District Program and Project Management Branch. For vacant land, follow the guidelines in Section 5.03.04.02 covering hardship applications.

The District should maintain a full economic justification of such purchases in its files.

Usually, improved properties can be acquired as protection parcels only in those cases where a definite showing can be made that the property owner has plans to remove the existing building improvements and/or replace the same with new building improvements that will represent a large increase in ultimate highway right of way acquisition cost. Consideration may also be given in those cases where existing building improvements are definitely planned to be altered or enlarged, or additional improvements are planned, resulting in a large increase in future acquisition cost.

The DDD-R/W shall approve each protection request. (See Section 5.01.03.00.) All appraisals submitted for approval must contain a copy of the written authorization approving the protection acquisition.

5.04.02.00 Protection Criteria

To be considered a valid candidate for protection acquisition, the property must be affected by a project that satisfies the following requirements:

- If there is no environmental clearance, then a negotiated settlement should have a high probability of success since condemnation will not be permitted without owner consent or the prior concurrence of the Legal Division Chief.

- Acquisition of the parcel is in compliance with the requirements of Section 5.01.05.00.
- Substantial savings will accrue considering return on investment.

5.04.03.00 Request for Authority to Acquire

All requests should show that prompt acquisition is required to prevent development of property, which would cause substantially higher acquisition or construction costs if acquisition were deferred. Relocation costs of people or businesses should also be considered in the financial analysis. (See Exhibit 5-EX-8 for sample format.)

Each request shall contain the information and material listed on the following page entitled "Submittal Items - Protection Application."

SUBMITTAL ITEMS – PROTECTION APPLICATION	
Item	Explanation
Written Request	<p>Addressed to the DDD-R/W or the DORW, as appropriate, including but not limited to the following:</p> <ul style="list-style-type: none"> • Name of present owner • Location of property • Area of each parcel proposed for acquisition and remainders • Name of developer (owner where applicable) and the financial capability of proceeding with development • Information on progress of developers in obtaining permits and filing subdivision maps and likelihood of local authority approval • District's estimate of probability of land development as proposed and the imminence of said development • Any other information that might be useful • Statement concerning the potential that hazardous waste would/would not be present on the property. (See Exhibit 5-EX-8 for sample format.) <p>If improvements are to be purchased include:</p> <ul style="list-style-type: none"> • Pictures of improvements • Description of improvements • Breakdown of estimated value of improvements separate from land
Protection Acquisition Savings Estimate (Exhibit 5-EX-1)	<ul style="list-style-type: none"> • Project escalation rate - obtained from the District Estimating Section. This rate is applied to estimated Right of Way Costs. • STIP inflation rate - obtained from the STIP. The Department of Finance (DOF) provides the inflation estimates every two years for use in the STIP Fund Estimate. If project is not in the STIP, then District develops a rate and explains how it was determined.
Resume of Protection Request (Exhibit 5-EX-2)	Brief summary of justification package contents.
Detail Map (1 copy)	<p>Showing the property in sufficient detail to properly evaluate the proposed purchase including property remainders, if any, and the location of access lines. Coloring or outlining of the subject parcel is required.</p> <p>Map should be no larger than half-scale 8-1/2"x11" appraisal map if possible.</p>
Strip Map (1 copy)	<p>Showing the subject property in relation to surrounding area and project.</p> <p>Map should be no larger than half-scale 8-1/2"x11" appraisal map if possible.</p>
Federal Participation Request	Copy of the FNM-76 or "Stage I Authorization Only" request.
Review and Written Approval of Regional Legal Office	Required if project is not environmentally cleared.